



STATE OF MAINE
Department of Environmental Protection

Paul R. LePage
GOVERNOR

Patricia W. Aho
COMMISSIONER

October 21, 2011

Mr. Aaron Bateman
Phoenix Management Company
P.O. Box 759
Saco, ME. 04072

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit #ME0023248
Maine Waste Discharge License (WDL) Application #W006931-5C-G-M
Diamond Cove Homeowners Association & The Inn at Diamond Cove LLC
Final Minor Revision

Dear Mr. Bateman:

Enclosed please find a copy of the **final** Maine MEPDES/WDL **minor revision** which was approved by the Department of Environmental Protection. Please read the permit and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

If you have any questions regarding this matter, please feel free to call me at 287-7693.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Wood".

Gregg Wood
Division of Water Quality Management
Bureau of Land and Water Quality

Enc. William Johnson, DEP/CMRO
Lori Mitchell, DEP/CMRO
Sandy Mojica, USEPA



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

DIAMOND COVE HOMEOWNERS ASSOC &)	MAINE POLLUTANT DISCHARGE
THE INN AT DIAMOND COVE, LLC)	ELIMINATION SYSTEM PERMIT
PORTLAND, CUMBERLAND COUNTY, ME.)	AND
OVERBOARD DISCHARGE)	
ME0023248)	WASTE DISCHARGE LICENSE
W006931-5C-G-M)	MINOR REVISION
APPROVAL)	

Pursuant to the provisions of the Federal Water Pollution Control Act, Title 33 USC, Section 1251, et. seq. and *Conditions of licenses*, 38 M.R.S.A. § 414-A and applicable regulations, the Department of Environmental Protection (Department hereinafter) is initiating a minor revision of combination Maine Pollutant Discharge Elimination System (MEPDES) permit #ME0023248/Maine Waste Discharge License (WDL) #W006931-5C-F-R (“permit” hereinafter), issued to the DIAMOND COVE HOMEOWNERS ASSOCIATION AND THE INN AT DIAMOND COVE, LLC (“permittee” hereinafter) on September 15, 2009. With its supportive data, agency review comments, and other related material on file, the Department finds the following facts:

MODIFICATION SUMMARY

On October 6, 2011, a consulting engineering firm representing the permittee submitted a letter to the Department requesting a minor revision of the schedule of compliance in Special Condition K, *Treatment System Repairs and Maintenance*, of MEPDES permit #ME0023248/WDL # W006931-5C-F-R. The request is based on a delay in the construction start date due to a legal dispute that was litigated in court and finalized in July of 2011. The delay resulted in a lost construction season and as a result, the project start date is now the spring of 2012 rather than the original construction start date scheduled for the spring of 2011.

The Department concurs that a revised schedule of compliance is warranted given the construction start date was delayed by factors outside of the control of the permittee. Therefore, this minor revision modifies the schedule of compliance in Special Condition K, *Treatment System Repairs and Maintenance*, of MEPDES permit # ME0023248/WDL # W006931-5C-F-R issued on September 15, 2009.

CONCLUSIONS

BASED on the findings on page 1 of this minor revision, and subject to the Conditions listed below, the Department makes the following conclusions:

1. The discharges, either individually or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
2. The discharges, either individually or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.
3. The provisions of the State's antidegradation policy, *Classification of Maine waters*, 38 M.R.S.A. § 464(4)(F), will be met, in that:
 - (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
 - (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected;
 - (c) Where the standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
 - (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and
 - (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.
4. The discharges will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S.A. § 414-A(1)(D).

ACTION

THEREFORE, the Department APPROVES the action to modify the schedule of compliance in Special Condition K, *Treatment System Repairs and Maintenance*, in MEPDES permit #ME0023248/WDL # W006931-5C-F-R, issued to the DIAMOND COVE HOMEOWNERS ASSOCIATION AND THE INN AT DIAMOND COVE, LLC on September 15, 2009, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations including:

1. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits*, revised July 1, 2002, copy attached to MEPDES permit #ME0023248/WDL # W006931-5C-F-R, issued on September 15, 2009.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. All terms and conditions of MEPDES permit #ME0023248/WDL # W006931-5C-F-R, issued on September 15, 2009, not modified by this permitting action remain in effect and enforceable.
4. This minor revision becomes effective on the date of signature below and expires on September 15, 2014, concurrent with MEPDES permit #ME0023248/ WDL #W006931-5C-F-R, issued on September 15, 2009. If a renewal application is timely submitted and accepted as complete for processing prior to the expiration of this permit, the terms and conditions of the this permit and all subsequent modifications and minor revisions thereto remain in effect until a final Department decision on the renewal application becomes effective. [*Maine Administrative Procedure Act*, 5 M.R.S.A. § 10002 and *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2(21)(A) (effective April 1, 2003)].

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: October 6, 2011
Date of application acceptance: October 7, 2011

This Order prepared by Gregg Wood, BUREAU OF LAND & WATER QUALITY
ME0023248 MR 2011 10/21/11

SPECIAL CONDITIONS

K. TREATMENT SYSTEM REPAIRS AND MAINTENANCE

Prior to habitation of the “Barracks” and final reconnection of the Barracks to the overboard discharge (OBD), or by March 8, 2012 [PCS Code 04599], which ever occurs first, the permittee shall permanently disconnect the “Hospital” from the sewer collection system and cap off that end of the sewer to exclude and inflow and infiltration (I&I) from the Hospital leg of the sewer.

Prior to habitation of the Barracks and final reconnection of the Barracks to the OBD, or by September 8, 2012 [PCS Code 04599], whichever occurs first, the permittee shall refurbish the remaining 1,340 linear feet of unrehabilitated sewer collection pipe, replace the perforated manhole cover on Diamond Avenue with a solid cover, replace/raise to grade the manhole casting between Units #83E-B30-3 and #83E-B40-4, and replace/raise to grade the manhole adjacent to Unit #83E-260-26A.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
